

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

JOHN PATRICK STOKES,

Plaintiff,

v.

HSBC, MACKOFF KELLOGG LAW
FIRM, CALIBER HOME LOANS, LSF8
PARTICIPATION TRUST, US BANK
N.A, FIRST AMERICAN TITLE
COMPANY OF MONTANA INC.,
HOUSEHOLD FINANCE
CORPORATION II, HOUSEHOLD
FINANCE CORPORATION III, ROBERT
DRUMMOND, JAMES MANLEY,
DANIEL COFFMAN, MICHAEL LILLY,
BENJAMIN HURSH, JOHN and JANE
DOES, 1-10 (to be named),

Defendants.

CASE NO. CV-18-00083 RJB

ORDER DENYING APPLICATION
TO PROCEED WITHOUT
PREPAYING FOR FEES OR
COSTS AND DISMISSING CASE

This matter comes before the Court on the Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs. Dkt. 1. The Court has considered the pleadings filed regarding the application and the remaining record.

1 On May 8, 2018, Plaintiff, acting *pro se*, filed a proposed complaint (Dkt. 2) and an
2 Application to Proceed in District Court Without Prepaying Fees or Costs (“IFP application”)
3 (Dkt. 1). Plaintiff asserts claims for violations of the Racketeer Influenced and Corrupt
4 Organizations Act (“RICO”), fraud, extortion, “misprision of felony,” slander of title, quiet title
5 and “related claims” in connection with the Defendants’ alleged actions in the foreclosure
6 proceedings on Plaintiff’s home and documents filed in bankruptcy cases and other court cases.
7 Dkt. 2. Plaintiff filed a Notice of Correction, indicating that the Defendant listed as “Daniel
8 Coffman” was mistyped and should be “Danielle Coffman.” Dkt. 7. For present purposes, the
9 Court will consider the claims asserted in the proposed complaint as being asserted against
10 Danielle Coffman, not Daniel Coffman.

11 In making the decision on the IFP application, the undersigned will first review the
12 proposed complaint to determine if the Court has subject matter jurisdiction over the case and
13 then whether the complaint is frivolous and malicious as required under 28 U.S.C. § 1915 (e)(2).

14 **Standards on Sua Sponte Dismissal.** Federal courts are courts of limited jurisdiction.
15 *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83 (1998). Jurisdiction is a threshold
16 issue that must be raised *sua sponte*. *Id.*, at 94-95. A case may be dismissed for lack of subject
17 matter jurisdiction under Fed. R. Civ. P. 12 (1).

18 **Review of the Complaint.** The Court has carefully reviewed the complaint in this
19 matter. Because Plaintiff filed this complaint *pro se*, the Court has construed the pleadings
20 liberally and has afforded Plaintiff the benefit of any doubt. *See Karim-Panahi v. Los Angeles*
21 *Police Dep’t*, 839 F.2d 621, 623 (9th Cir.1988).

22 The proposed complaint is difficult to understand and Plaintiff fails to clearly articulate
23 which claim he is making against which defendant. Plaintiff alleges that in July 2009, he and his
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1 wife obtained a loan for around \$198,500 from Weyerhaeuser Mortgage Company. Dkt. 2, at 3.
2 He maintains that monthly payments were made to HSBC through May of 2009. *Id.*

3 Plaintiff asserts that he filed for “Chapter 11, business bankruptcy in March 2009,
4 Bankruptcy Case No 09-60250 to stay [a] levy on a \$3.8 million unlawful slander judgment, and
5 listed all assets and liabilities . . . [a]ssets were approximately \$10,400,000.00.” *Id.* He alleges
6 that on March 20, 2009, HSBC filed a “blank forged, fabricated Proof of Claim.” *Id.* Plaintiff
7 states that the “U.S. Trustee converted to Chapter 7.” *Id.* He maintains that the Trustee filed an
8 adversary proceeding, in part, to sell the residence located at 12887 Raven Way, Bigfork,
9 Montana (“Raven Way residence”) together with 80 acres. *Id.* Plaintiff asserts that HSBC “filed
10 a blank endorsement, undated as a Proof of Claim.” *Id.* He alleges that the “US Trustee
11 disallowed the blank endorsement and demanded the original note.” *Id.*, at 3. Plaintiff maintains
12 that HSBC “defaulted” and the property was sold to his wife, Pamela Stokes. *Id.*, at 4. Plaintiff
13 states that HFC II “then presented a Proof of Claim alleging they now owned the original note.”
14 *Id.* Plaintiff asserts that he “challenged the Proof of Claim as false and fabricated and the note
15 presented by HFC II was not assigned or payable to HFC II . . . [but] was endorsed to HFC III.”
16 *Id.* He alleges that the “forged fabricated assignment was provided by HSBC to HFC II” using
17 “wire and telephonic communications to transmit and US Mail on all forgeries.” *Id.* He again
18 maintains that the property was sold to Pamela Stokes. *Id.*

19 Plaintiff states that the “John Stokes Bankruptcy BK # 09-60250 closed in 2012 and
20 Stokes was fully discharged from all debt.” *Id.* He alleges that “Robert Drummond has now
21 placed that entire case before the Ninth Circuit Appeals Court, California, and all documents
22 thereof. Including said forgeries.” *Id.*

1 Plaintiff alleges that “Caliber Homes began demanding and attempted extortion for
2 payments . . . on the disallowed and forged note or face trustee sale” on the Raven Way
3 residence. *Id.*, at 5. He asserts that “LSF8, through First American Title and U.S. Bank began
4 foreclosure proceedings,” and that his wife, Pamela Stokes filed a “Chapter 13 Bankruptcy, No.
5 14-61170 to stay the sale.” *Id.* Plaintiff maintains that “LSF8 submitted the same ‘BLANK’
6 endorsement of the note as a Proof of Claim” and “presented yet another false and fabricated
7 Proof of Claim, through their attorneys, payable and endorsed to HFC II, for the purposes
8 fraudulently lifting the stay and proceeding to foreclosure.” *Id.* Plaintiff asserts that LSF8
9 obtained relief “[t]hrough the filing of false documents.” *Id.*

10 Plaintiff alleges that he filed a “civil complaint in Lake County DV-14-223” and “[t]hat
11 case is pending review by the United States Supreme Court.” *Id.*, at 5. He maintains that he
12 obtained defaults in this case for approximately \$2.3 million each. *Id.* Plaintiff asserts that
13 “James Manley, acting as District Judge, refused to reduce to Money Judgment in disobedience
14 to the confirmed Bankruptcy plan and order and issued an Order of Abeyance.” *Id.*, at 6.
15 Plaintiff states that “he was again forced to petition the bankruptcy court for Chapter 13
16 protection from unlawful trustee sale.” *Id.* He asserts that Judge Manley “without leave of the
17 bankruptcy court, set a hearing for the purposes of dismissing the defaults and allowing the
18 defendants to answer, 1½ years after default,” without motion and in violation of the bankruptcy
19 stay. *Id.* Plaintiff alleges that Judge Manley had ex-parte contract with defendants’ attorneys
20 and “said defendants filed an answer within 2 days.” *Id.*

21 Plaintiff acknowledges that he missed a creditors meeting in his bankruptcy case and
22 alleges that Robert Drummond, “acting Chapter 13, had ex-parte contact with defendants,” told
23 them he would move for dismissal of the bankruptcy petition, “and they would then be free to
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1 foreclose on Plaintiff.” *Id.* Plaintiff asserts that Robert Drummond “had actual knowledge
2 defendants assignments of Note were forgeries . . . a felony under 18 [§] USC 4.” *Id.*, at 7. He
3 alleges that on “August 18, 2016, Defendants allegedly conducted a Trustee Sale.” *Id.* Plaintiff
4 asserts that LSF8 has “attempted to change the locks on Stokes residence twice.” *Id.*, at 8.

5 Plaintiff asserts that Benjamin Hursh “appeared as attorney for First American Title, in
6 the Lake County Case and appeared on August 10, 2016 in John Stokes[’] Bankruptcy case. At
7 all time[s], Benjamin Hursh had actual knowledge of the forgeries and fabrications.” *Id.* at 7.
8 He maintains “Danielle Coffman and Michael Lilly and their clients had actual knowledge of the
9 forged and fabricated Notes. Lender defendants admitted by defaults the forgeries and
10 fabrication.” *Id.* He alleges that “Defendants HSBC, US BANK N.A., HFC II, HFC III, Caliber
11 Home Loans, LSF8 have a pattern and practice of mortgage fraud.” *Id.*

12 Plaintiff maintains that “all Defendants did acquire and/or maintain, directly or indirectly,
13 an interest in or control of a RICO enterprise . . . [and] all had and still do have actual knowledge
14 of the forgeries and have failed to come forward and committed a a [sic] felony by their silence.”
15 *Id.*, at 7-8. He alleges that the RICO predicate acts occurred “during the nine (9) calendar years
16 preceding May 4, 2018.” *Id.*, at 8.

17 Plaintiff asserts that “Defendants maliciously and willfully disclosed a proposed
18 settlement offer to the Montana Supreme Court during appeal, that so prejudiced the court, that
19 said court labeled [Plaintiff] a Vextaious [sic] Litigant. . . [Plaintiff] is now deprived of his
20 constitutional rights of equal access to the courts of Montana, forever.” *Id.*

21 Plaintiff makes eight claims, referred to as counts in the proposed complaint. Dkt. 2, at
22 9-14.

1 In count one, Plaintiff asserts that the Defendants “Mackoff Kellogg Law Firm – MT and
2 HSBC knowingly submitted a false, forged and fabricated proof of claim in BK 09-60250 under
3 penalty of perjury, fine and imprisonment to obtain property of Plaintiff.” Dkt. 2, at 9. Plaintiff
4 asserts that HSBC is not “a holder in due course, or actual owner of the note . . . [or] in the chain
5 of title of said note.” *Id.*

6 Count two claims that “HBC II and their attorney(s) knowingly submitted a false, forged
7 and fabricated proof of claim in BK 09-60250 payable to HFC III, under penalty of perjury.” *Id.*

8 In count three, Plaintiff asserts that “HFC II allegedly assigned the note owned by HFC
9 III to LSF8 and attempt to deprive [Plaintiff] Stokes of property and foreclose using a knowingly
10 false and fabricated assignment. Committing the act of fraud upon the court and plaintiff.
11 Felony Grand Theft.” *Id.*

12 Count four claims that “LSF8 and their attorney knowingly submitted a false, forged and
13 fabricated proof of claim in Federal Bankruptcy Court BK # 14-61170-13, payable to HFC II,
14 handwritten in blue ink. The document is a total fabrication and fraud and intended to deceive
15 the court and plaintiffs.” *Id.*, at 10.

16 In count five, Plaintiff claims that in July of 2016, Judge Manley, acting as a state judge,
17 “issued an order of Abeyance only as to John and Pam Stokes and obstructed and denied Court
18 Order of (Pam BK).” He asserts that Judge Manley “had actual knowledge of the filed
19 bankruptcy petition, the requirement to stay all state civil proceedings. . . [and] Manley’s action
20 deprived Stokes of approximately \$4.6 million in assets to be paid and distributed to Stokes
21 creditors.” *Id.*

22 Count six claims that “Defendants attempted extortion 4 [four] times against the Stokes
23 demanding \$275-400k in threat of loss of property through Trustee sale and numerous demand
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1 letters. At no time did defendants posse [sic] a lawful note.” *Id.*, at 9-10. It further claims that
2 on “LSF8, US Bank N/A. and First American Title did conduct an unlawful trustee sale.” *Id.*, at
3 10. Plaintiff asserts that HFC II did not have ownership and possession of the original note “and
4 any assignment to a trustee for purposes of foreclosure is a fraud.” *Id.*, at 11.

5 Plaintiff maintains in count seven that “Defendants violated USC 11 363 [sic] and
6 conducted a state hearing on August 10, 2016, without leave of the Federal Bankruptcy Court for
7 the purpose of removing approximately \$4,600,000.00 from the estate.” *Id.* He further claims
8 that “Defendants are subject to damages and penalties under 11 362 (K) and (h) [sic] for actual
9 damages of \$4.6 million and punitive damages under 11 USC 362 (h) (k) [sic] and treble RICO
10 damages.” *Id.*

11 Count eight claims that Plaintiff has been financially and emotionally damaged by
12 Defendants’ actions. *Id.*

13 In count nine, Plaintiff asserts that he has “been forever barred from equal access to the
14 State Courts of Montana. A clear violation of Civil Rights and emotional and economic harm.”
15 *Id.*, at 12.

16 Plaintiff seeks damages, “quiet title in favor of Plaintiff,” and “immediately recommend
17 investigation by the appropriate authorities and licensing agencies of the named attorneys for
18 disbarment proceedings, sanctions and other appropriate relief.” Dkt. 2, at 12-14.

19 **Judicial Notice.** “A court may take judicial notice of matters of public record.” *Lee v.*
20 *City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001). Plaintiff’s proposed complaint makes
21 reference to several cases in both federal and state court.

22 The Court takes judicial notice of two opinions from the Montana State Supreme Court
23 that appear to shed some light on Plaintiff’s (sometimes difficult to understand) assertions. On
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1 November 17, 2017, the Montana State Supreme Court issued an unpublished decision denying
2 an appeal brought by Plaintiff and affirming decisions by Judge Manley in the Lake County,
3 Montana District Court case number 14-223. *Stokes v. First American Title Co.*, 2017 MT 274N,
4 DA 17-0161. That case was brought against two Defendants in this case: First American Title
5 Company of Montana, Inc., and US Bank Trust N.A., as Trustee for LSF8 Master Participation
6 Trust. *Id.* Two other Defendants in this case acted as lawyers for Defendants in that case:
7 Michael Lilly and Danielle Coffman. *Id.* In any event, the opinion provided:

8 John and Pamela Stokes (the Stokes) appeal the summary judgment order
9 dismissing this action, entered by the Twentieth Judicial District Court, Lake
10 County, Honorable James Manley presiding. The Stokes sought a declaratory
11 judgment regarding their rights in their home and to enjoin the property's
12 foreclosure. The Stokes' counsel withdrew, and a chain of events then unfolded
13 that complicated the proceedings. The Stokes moved for default against the
14 Appellees and, subsequently, on July 15, 2016, John Stokes filed for Chapter 13
15 bankruptcy protections. Unaware that a bankruptcy action had been filed, the
16 District Court set a hearing on the Stokes' request for default, which was held on
17 August 10, 2016. The Stokes failed to attend. On August 12, 2016, the United
18 States Bankruptcy Court dismissed John Stokes' bankruptcy petition for his
19 failure to attend a hearing. The District Court, now aware of the bankruptcy
20 proceeding, set aside the default at the request of Appellees and the Stokes'
21 property was sold in foreclosure. John Stokes then moved to re-open his
22 bankruptcy proceeding. The District Court entered summary judgment in favor of
23 First American and U.S. Bank Trust on Stokes' claims and dismissed the action.
24 The Stokes appeal.

 The Stokes make a broad range of often outlandish accusations about how
their case, and their past cases, have been handled. They assert, with no citation or
explanation, that Appellees are "a mortgage scam enterprise and laundering front
for the Drug Cartel" who have "fabricated" and "forged" evidence. These
allegations aside, it is difficult to ascertain exactly what legal issues the Stokes are
appealing. It appears they argued that the District Court lacked jurisdiction, given
the 11 U.S.C. § 362(a) automatic stay arising from the bankruptcy petitions filed
by both the Stokes. The District Court determined the stay related to John Stokes'
bankruptcy did not prevent the court from ruling on an action brought by the
debtors. *See, e.g., Eisinger v. Way*, 229 B.R. 11, 13 (B.A.P. 9th Cir. 1998)
(*citations omitted*) ("the automatic stay does not prohibit a defendant in an action
brought by a plaintiff/debtor from defending itself in that action."). The Stokes
argue the cases relied on by the District Court are factually distinguishable, but
provide no citation to authority or legal analysis. They assert that Pamela Stokes'

1 bankruptcy likewise removed jurisdiction from the District Court, but provide no
2 citations to authority or cogent argument.

3 The Stokes also assert that Judge Manley was biased against them. . . . We
4 reject the allegation of bias for lack of any factual basis.

5 Finally, the Stokes argue that the District Court improperly vacated the
6 default. The default was vacated following a hearing the Stokes failed to attend,
7 and they assert they were unable to attend due to medical reasons. The Stokes
8 offer no citations to the record and advance no supported legal arguments.

9 The appellant bears the burden of establishing error, and for us to render
10 an informed and legally correct opinion, the appellant must provide legal
11 argument, citations to authority, and citations to the record in support of their
12 arguments. *See State v. Gomez*, 2007 MT 111, ¶¶ 31-34, 337 Mont. 219, 158 P.3d
13 442 (*citations omitted*). The Stokes' briefing lacks all three, and is nearly
14 unintelligible. We conclude the Stokes failed to meet their burden of establishing
15 error.

16 *Stokes v. First American Title Co.*, 2017 MT 274N, DA 17-0161. In addition to affirming Judge
17 Manley's decisions, that same day, the Montana Supreme Court issued an opinion and order,
18 declaring Stokes a vexatious litigant and requiring anything he files in a Montana state district
19 court or the Montana Supreme Court be either (1) pre-approved by the court in which he seeks to
20 file or, alternatively, (2) "certified by a licensed Montana lawyer in good standing as meritorious
21 under M.R. Civ. P. 11." *Stokes v. First American Title Co.*, 389 Mont. 245 (2017). Noting that in
22 *Motta v. Granite Cty. Comm'rs*, 370 Mont. 469 (2013), Montana adopted the Ninth Circuit Court
23 of Appeals' five factor test announced in *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047,
24 1058 (9th Cir. 2007) to determine whether a pre-filing order is justified, the Montana Supreme
Court found that:

Under the first [*Motta*] factor, Stokes' history of litigation in the district
courts is significant and has entailed vexatious, harassing, or duplicative lawsuits.
Stokes has been before this Court ten times. In several of these cases, Stokes was
represented by counsel, and there was no assertion that the appeals had been taken
unreasonably. However, Stokes' pro se appeals have repeatedly been found to be
insufficiently presented, including a failure to provide a sufficient record or a
failure to raise cognizable arguments, and have usually been affirmed in a
memorandum opinion based upon the failure to meet the appellant's burden. In
this matter, we conclude that Mr. and Mrs. Stokes' appeal was taken without
substantial or reasonable grounds. As noted in our memorandum opinion, their

1 briefing lacked citations to the record, citations to authority, and cognizable legal
2 argument.

3 Further, the briefing asserted numerous serious and unsupported
4 accusations against party opponents, judges, and officials. With no citation to the
5 record, Mr. and Mrs. Stokes alleged fraud, fabrication, collusion, harassment, and
6 intimidation by their bankruptcy trustees; bias and prejudice by Judge Manley;
and that Appellees were a “scam enterprise and laundering front for the Drug
Cartel...” The brief also stated that John Stokes personally removed a majority of
the judges in Flathead County and implied a threat to initiate a federal suit against
Judge Manley in California. We find such serious and wholly unsupported
statements to be harassing and vexatious.

7 Appellees also attached complaints in four other suits brought by Stokes
8 pro se, one which was entitled “COMPLAINT FOR EMBEZZLEMENT [sic],
EXTORTION AND DAMAGES.” They include outlandish allegations of a
9 harassing and abusive nature. Appellees quote from district court orders
expressing frustration with Stokes' litigation tactics:

10 Stokes' brief is a litany of confused “facts,” in which he attempts
11 to intertwine at least three separate lawsuits ... Stokes wholly fails
12 to respond to the Plaintiffs' argument that Stokes has pled no actual
13 cause of action ... Once again, Stokes mixes motions, relies on
14 outdated case law and in general impermissibly attempts to re-
litigate matters ... Stokes seeks to add the individual attorneys and
the law firm as third party defendants. He alleges that the
individuals and the law firm have prepared false affidavits, have
withheld documents in a separate lawsuit, and have a financial
interest in continuing the litigation ... Once again, the Court is
faced with superfluous pleadings, which have no basis in fact or
law and which consume limited Court resources.

15 *Gardner v. Stokes*, No. DV 07-0729(B) (Mont. 11th Judicial Dist. July 17, 2008).
16 A different district court judge stated, “Stokes has filed an incomprehensible
17 motion, accompanied by an equally convoluted brief ...” and concluded it was
“yet another example of [Stokes'] blatant disregard of legal procedures and rules.”
Anderson v. Stokes, No. DV 01-023C (Mont. 11th Judicial Dist. April 28, 2008).

18 Stokes did not file a response to the motion seeking his declaration as a
19 vexatious litigant, but argued in his appellate reply brief that, by citing his filings
20 in other cases, Appellees have offered inadmissible evidence in support of their
21 motion. However, this Court may take judicial notice of other court proceedings,
and we do so here. M. R. Evid. 202. While it would be preferable for a pre-filing
order to be entered by a trial court upon fact-finding, we cannot ignore vexatious
actions, particularly those that occur in this Court. We conclude the first factor of
the *Motta* test is satisfied.

22 Under the second factor, we find Stokes does not have an objective good
23 faith expectation of prevailing in the foreclosure matter that was the subject of his
24 appeal. His pro se motions and briefs were procedurally unrecognizable and
lacking in proper legal arguments. One federal judge commented: “Stokes is not
an attorney, and while he zealously argues his positions, the record of his

1 unsuccessful results in litigation is uniform and speaks for itself.” *In re Stokes*,
 2 No. 09-60265-11, 2009 WL 3062314 at *19, 2009 Bankr. LEXIS 3030 at *52
 (U.S. Bankr. D. Mont. Sep. 21, 2009).

3 The third factor, whether Mr. Stokes is represented by counsel, is an
 4 important consideration here and affects the breadth of the remedy ordered. The
 5 vexatious behavior exhibited by Stokes has occurred prevalently while he was
 6 acting pro se, exemplified by the present appeal, wherein his counsel withdrew
 and Stokes thereafter filed a number of harassing pleadings while representing
 himself. Similarly, in *Motta*, we concluded that the pre-filing order at issue, which
 restricted Motta's pro se filings, was narrowly tailored and appropriately entered.
Motta, ¶¶ 17, 22.

7 Under the fourth factor, it is clear from the actions described above that
 8 Stokes has caused needless expense to other parties and posed an unnecessary
 burden on the courts. In the litigation at issue in this appeal, Stokes filed an action
 9 to prolong the foreclosure process, and then later argued the court lacked
 jurisdiction to address the very action he initiated, an effort that merely caused
 confusion and turmoil.

10 Finally, we conclude that sanctions other than a pre-filing order would be
 11 inadequate. Stokes has previously litigated over significant debt and initiated
 bankruptcy proceedings. A financial sanction of costs or fees would appear to
 12 give a litigant with Stokes' history little pause in pursuing further vexatious
 behavior in the courts. Indeed, district courts have imposed such fees on Stokes in
 the past, with little or no discernible impact. In his appellate briefing here, Stokes
 13 has already threatened future litigation against the same parties and the presiding
 judge. Further, given the broad range of litigation Stokes has brought in multiple
 14 judicial districts, we see no way to effectively narrow the pre-filing order to a
 particular type of claim.

15 We conclude the applicable *Motta* test is satisfied and that the necessity of
 a pre-filing order has been established when Stokes is litigating pro se. Consistent
 16 with the Montana Constitution, an order has a direct relationship to the state
 interest of protecting other parties from the unnecessary expense of litigating
 against Stokes and protecting the courts from the unnecessary expenditure of
 17 judicial resources.

18 *Stokes v. First American Title Co.*, 389 Mont. 245, at 247-250 (2017).

19 The Court also takes judicial notice of records filed in the U.S. Supreme Court. Dated
 20 March 8, 2018, John and Pamela Stokes filed an application to proceed IFP and a Petition for a
 21 Writ of Certiorari with the U.S. Supreme Court. *Stokes v. First American Title Co.*, __ U.S. __
 22 (May 18, 2018) In their petition, the Stokes reference both the Montana State Court's decision
 23 affirming the trial court and the decision declaring him a vexatious litigant. *Id.* The petition
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1 alleges fraudulent documents were used in the foreclosure action, including the allegation that
2 the “Defendants proceeded to a Trustee Sale based on forged false assignments.” *Id.* It also
3 raises issues around proceedings before Judge Manley and the bankruptcies. *Id.* Further, it
4 asserts that Mr. Stokes’ constitutional and civil rights have been violated by the Montana
5 Supreme Court’s vexatious litigant order. *Id.* No decision on the Stokes’ application to proceed
6 IFP or on their petition have been made by the U.S. Supreme Court.

7 **Analysis of Whether the Court has Subject Matter Jurisdiction and the Rooker-**
8 **Feldman Doctrine.** Federal courts are courts of limited jurisdiction. *Steel Co. v. Citizens for a*
9 *Better Environment*, 523 U.S. 83 (1998). Jurisdiction is a threshold issue that must be raised *sua*
10 *sponte*. *Id.*, at 94-95. “The Rooker–Feldman doctrine instructs that federal district courts are
11 without jurisdiction to hear direct appeals from the judgments of state courts. Congress, in 28
12 U.S.C. § 1257, vests the United States Supreme Court, not the lower federal courts, with
13 appellate jurisdiction over state court judgments.” *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir.
14 2012)(citing *Lance v. Dennis*, 546 U.S. 459, 463 (2006)(*per curiam*)). “The clearest case for
15 dismissal based on the Rooker–Feldman doctrine occurs when a federal plaintiff asserts as a
16 legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court
17 judgment based on that decision.” *Henrichs v. Valley View Dev.*, 474 F.3d 609, 613 (9th Cir.
18 2007). “The doctrine bars a district court from exercising jurisdiction not only over an action
19 explicitly styled as a direct appeal, but also over the ‘de facto equivalent’ of such an appeal.”
20 *Cooper*, at 777 (*internal quotations and citation omitted*).

21 Plaintiff’s claims either directly seek relief from the Montana Supreme Court decisions or
22 are the “de facto equivalent” of such an appeal and so this U.S. District Court does not have
23 jurisdiction to consider the case. *Cooper*, at 777. Plaintiff’s attempt to add parties, or recast the
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1 facts or claims is unhelpful. A federal district court dealing with a suit that is, in part, a
2 forbidden de facto appeal from a judicial decision of a state court must refuse to hear the
3 forbidden appeal. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir.2003). As part of that refusal, it
4 must also refuse to decide any issue raised in the suit that is “inextricably intertwined” with an
5 issue resolved by the state court in its judicial decision. *Id.*, at 1158. All issues raised in this
6 case are “inextricably intertwined” with issues resolved by the Montana State Supreme Court’s
7 decisions.

8 Further, these issues are now on appeal with the U.S. Supreme Court, stripping this Court
9 of jurisdiction to consider the issues raised here. To the extent Plaintiff is attempting to
10 challenging findings and orders of the bankruptcy courts here, this case should also be dismissed
11 because the undersigned does not have jurisdiction to consider these challenges. Plaintiff did not
12 follow the proper bankruptcy appellate procedures. *See* Fed. Rule Bankr. Proc. 8002.

13 This Court does not have subject matter jurisdiction to consider this case and so the
14 proposed complaint should be dismissed.

15 **Review of Whether Case is Frivolous and Malicious under 28 U.S.C. § 1915.**

16 Plaintiff’s decision to file this additional complaint when these issues are on appeal with the U.S.
17 Supreme Court was “frivolous and malicious.” It is duplicative of his prior suits and is a
18 continuation of his harassing behavior toward judicial officers, officers of the court, and
19 opposing parties from other cases. This case should also be dismissed under 28 U.S.C. § 1915
20 (e)(2).

21 **Standard for Granting IFP Application.** The district court may permit indigent
22 litigants to proceed IFP upon completion of a proper affidavit of indigency. *See* 28 U.S.C. §
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1 1915(a). However, the court has broad discretion in denying an application to proceed *in forma*
2 *pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963).

3 **Decision on IFP Application.** While Plaintiff's showing of poverty is sufficient, this
4 Court does not have jurisdiction to consider this case. Moreover, Plaintiff's proposed complaint
5 is frivolous and malicious. Both these grounds require dismissal of the case. Accordingly, this
6 Court should exercise its broad discretion and deny Plaintiff's IFP application (Dkt. 1).

7 **Leave to Amend.** Unless it is absolutely clear that no amendment can cure the defect, a
8 *pro se* litigant is entitled to notice of the complaint's deficiencies and an opportunity to amend
9 prior to dismissal of the action. *See Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir.1995).

10 In this case, any attempt by Plaintiff to amend the complaint would be futile. Plaintiff
11 should not be afforded leave to amend his complaint.

12 **IFP on Appeal.** In the event that Plaintiff appeals this order, and/or appeals dismissal of
13 this case, IFP status should be denied by this Court, without prejudice to Plaintiff to file with the
14 Ninth Circuit U.S. Court of Appeals an application to proceed IFP. This Court certifies, under
15 28 U.S.C. § 1915 (a)(3), that an appeal, if any, is not taken in good faith.

16 **Future filings.** Other than a Notice of Appeal, any filings in this case in the future will
17 be docketed by the Clerk but not acted upon by the Court.

18 **ORDER**

19 It is **ORDERED** that:

- 20 • Plaintiff's Application to Proceed in District Court Without Prepaying Fees or
21 Costs (Dkt. 1) **IS DENIED**;
- 22 • This case **IS DISMISSED**;
- 23
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- In the event that Plaintiff appeals this order, and/or appeals dismissal of this case, IFP status **IS DENIED** by this Court, without prejudice to Plaintiff to file with the Ninth Circuit U.S. Court of Appeals an application to proceed IFP;
- This Court certifies, under 28 U.S.C. § 1915 (a)(3), that an appeal, if any, **IS NOT TAKEN IN GOOD FAITH**; and
- Other than a Notice of Appeal, any filings in this case in the future will be docketed by the Clerk but not acted upon by the Court.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 17th day of May, 2018.



ROBERT J. BRYAN
United States District Judge